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20 **UNITED STATES DISTRICT COURT**
21 **DISTRICT OF NEVADA**

22 ANNIVERSARY MINING CLAIMS, L.L.C.,

23 Plaintiff,

24 v.

25 UNITED STATES OF AMERICA, et al.,

26 Defendants.

Case No. 2:16-cv-00932-JCM-GWF

**JOINT MOTION TO STAY
DISCOVERY FOR GOOD
CAUSE**

1 The Parties, through their respective counsel of record, hereby move the Court for an
2 order to stay discovery for good cause shown. Support for this motion is set forth below.

3 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STAY DISCOVERY**

4 Plaintiff has brought this action under the Quiet Title Act and Declaratory Judgment Act,
5 seeking to quiet title so that it can use and maintain Anniversary Mine Road for commercial
6 purposes. ECF No. 1. On June 28, 2016, Federal Defendants filed a motion to dismiss the
7 complaint pursuant to Rules 12(b)(1) and 12(b)(6) of Federal Rules of Civil Procedure. ECF No.
8 15 at 1. Plaintiff filed a response to the motion to dismiss, ECF No. 17, and Federal Defendants
9 filed a reply. ECF No. 22. The motion to dismiss is fully briefed.

10 In the motion to dismiss, Federal Defendants contend that the complaint fails to allege
11 claims that satisfy the Quiet Title Act's waiver of sovereign immunity and thus the Court lacks
12 subject matter jurisdiction and must dismiss the complaint pursuant to Rule 12(b)(1). In
13 addition, Federal Defendants contend that Plaintiff fails to state a claim upon which relief can be
14 granted and the Court must dismiss the complaint pursuant to Rule 12(b)(6).

15 On August 12, 2016, the Parties submitted a proposed discovery plan and scheduling
16 order pursuant to LR 26-1(b). ECF No. 23. In their proposed scheduling order, the Parties
17 proposed non-specific dates for discovery and related deadlines, all of which are contingent on
18 the Court first ruling on the motion to dismiss. *Id.* at 2-3. The Parties offered to file a substitute
19 discovery plan and scheduling order with specific dates should the motion to dismiss be denied
20 in whole or in part. *Id.* at 2 n.2. The Court denied the proposed discovery plan and scheduling
21 order and directed the Parties to submit a revised proposed discovery plan and scheduling order
22 that sets forth specific dates and related deadlines or to file a motion to stay discovery, pending a
23 decision on the motion to dismiss, supported by good cause. ECF No. 24.

24 The Parties have conferred and agreed to file this joint motion for a stay of discovery
25 pending a decision on the motion to dismiss. Good cause for granting this request is set forth
26 below.

27 There is good cause for the Court to order a stay of discovery pending a decision on the
28 motion to dismiss. In this case, Federal Defendants have filed a dispositive motion challenging

1 the legal sufficiency of the complaint. That motion seeks to dismiss the complaint in its entirety
2 for failing to establish that the Court has subject matter jurisdiction or to state a claim. The
3 Parties have not sought any jurisdictional discovery in this case and agree that the motion to
4 dismiss can be decided on the basis of the complaint itself and the Parties' filings on the motion
5 to dismiss.

6 At this stage in the proceedings, the Parties can avoid expending costs and diverting
7 resources for purposes of discovery while the legal sufficiency of the complaint is being
8 challenged. In deciding whether to issue a stay, courts appropriately take account of
9 considerations such as the cost and inconvenience of discovery. Rule 1 of Federal Rules of Civil
10 Procedure encourages this by directing that the Rules shall be "construed and administered to
11 secure the just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1; *see*
12 *also Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597 (D. Nev. 2011) (evaluating whether to order
13 stay in light of Rule 1); *Abrego v. U.S. Bank Nat'l Ass'n*, No. 2:13-cv-01795-JCM-GWF, 2014
14 WL 374755 at *2 (D. Nev. Jan. 31, 2014) (same).

15 The potential to avoid the costs and inconvenience of discovery is particularly
16 appropriate in cases like this one, where a stay is sought pending a decision on a dispositive
17 motion. In cases where a party seeks to stay discovery pending a decision on a Rule 12(b)(6)
18 motion, courts have applied a three-part test, granting a motion to stay where (1) the pending
19 motion is potentially dispositive, (2) the pending motion can be decided without additional
20 discovery, (3) and the Court has taken a "preliminary peek" at the merits of the dispositive
21 motion "and is convinced that the plaintiff will be unable to state a claim for relief." *Kor Media*
22 *Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013); *Babin-De-Jesus v. American Express*
23 *Co.*, No. 2:16-cv-00636-RFB-GWF, 2016 WL 3563082 at *2 (D. Nev. June 28, 2016). The
24 Parties agree that the first two prongs of the three-part test are established. In this case, where
25 the Parties jointly move for a stay of discovery, it should be enough, for purposes of establishing
26 good cause, that the first two prongs have been established.

27 In addition, Federal Defendants have moved to dismiss the complaint for lack of subject
28 matter jurisdiction under Rule 12(b)(1). Were the Court to agree with Federal Defendants that

there is no subject matter jurisdiction, it would be *required* to dismiss the complaint. Fed. R. Civ. P. 12(h)(3). Indeed, the requirement that a federal court have subject matter jurisdiction is so fundamental to its ability to decide a case on the merits, a challenge to it may be brought at any stage of the proceedings and a court should raise the question *sua sponte*. *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004). Moreover, in this case, the challenge to subject matter jurisdiction is predicated on the United States' sovereign immunity, which shields it from being sued at all in the absence of an applicable waiver. In the context of motions seeking protective orders under Rule 26(c), courts have noted that examples where a protective order should issue include situations "when jurisdiction, venue, or immunity are preliminary issues." *Twin City Fire Ins. Co. v. Employers Ins. of Wausau*, 124 F.R.D. 652, 653 (D. Nev. 1989); *see also Grand Canyon Skywalk Dev. LLC v. Steele*, No. 2:13-cv-00596-JAD-GWF, 2014 WL 60216 at *2 (D. Nev. Jan. 7, 2014). Because jurisdiction and immunity are preliminary issues in this case, there is good cause for granting the motion for a stay.

The Parties agree that the foregoing reasons establish good cause for granting their joint motion to stay discovery pending a decision on the motion to dismiss. Plaintiff and Federal Defendants respectfully and jointly request that the Court grant the motion to stay discovery for good cause.

Respectfully submitted: August 19, 2016.

/s/ Karen Budd Falen (by scd w/ permiss.)

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8 *Attorneys for Federal Defendants*

9 IT IS SO ORDERED:

10 
11 GEORGE FOLEY, JR.

12 United States Magistrate Judge

13 DATED: August 22, 2016
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Certificate of Service

I hereby certify that on August 19, 2016, I filed the foregoing with the Clerk of Court via the CM/ECF system, which will provide service to all attorneys of record.

/s/ Sean C. Duffy

Sean C. Duffy

Attorney for Federal Defendants